

(2) The Commissioner may require that a manufacturer, importer, or distributor make reports or provide other information bearing on the classification of a device and indicating whether there is reasonable assurance of the safety and effectiveness of the device or whether it is adulterated or misbranded under the act.

(3) A requirement for a report or other information under this paragraph will comply with section 519 of the act. Accordingly, the requirement will state the reason or purpose for such request; will describe the required report or information as clearly as possible; will not be imposed on a manufacturer, importer, or distributor of a classified device that has been exempted from such a requirement in accordance with § 860.95; will prescribe the time for compliance with the requirement; and will prescribe the form and manner in which the report or information is to be provided.

(4) Required information that has been submitted previously to the Center for Devices and Radiological Health need not be resubmitted, but may be incorporated by reference.

[43 FR 32993, July 28, 1978, as amended at 53 FR 11253, Apr. 6, 1988]

### Subpart B—Classification

#### § 860.84 Classification procedures for “old devices.”

(a) This subpart sets forth the procedures for the original classification of a device that either was in commercial distribution before May 28, 1976, or is substantially equivalent to a device that was in commercial distribution before that date. Such a device will be classified by regulation into either class I (general controls), class II (special controls) or class III (premarket approval), depending upon the level of regulatory control required to provide reasonable assurance of the safety and effectiveness of the device (§ 860.3(c)). This subpart does not apply to a device that is classified into class III by statute under section 513(f) of the act because the Food and Drug Administration has determined that the device is not “substantially equivalent” to any device subject to this subpart or under section 520(l) (1) through (3) of the act

because the device was regarded previously as a new drug. In classifying a device under this section, the Food and Drug Administration will follow the procedures described in paragraphs (b) through (g) of this section.

(b) The Commissioner refers the device to the appropriate classification panel organized and operated in accordance with section 513 (b) and (c) of the act and part 14 of this chapter.

(c) In order to make recommendations to the Commissioner on the class of regulatory control (class I, class II, or class III) appropriate for the device, the panel reviews the device for safety and effectiveness. In so doing, the panel:

(1) Considers the factors set forth in § 860.7 relating to the determination of safety and effectiveness;

(2) Determines the safety and effectiveness of the device on the basis of the types of scientific evidence set forth in § 860.7;

(3) Answers the questions in the classification questionnaire applicable to the device being classified;

(4) Completes a supplemental data sheet for the device;

(5) Provides, to the maximum extent practicable, an opportunity for interested persons to submit data and views on the classification of the device in accordance with part 14 of this chapter.

(d) Based upon its review of evidence of the safety and effectiveness of the device, and applying the definition of each class in § 860.3(c), the panel submits to the Commissioner a recommendation regarding the classification of the device. The recommendation will include:

(1) A summary of the reasons for the recommendation;

(2) A summary of the data upon which the recommendation is based, accompanied by references to the sources containing such data;

(3) An identification of the risks to health (if any) presented by the device;

(4) In the case of a recommendation for classification into class I, a recommendation as to whether the device should be exempted from the requirements of one or more of the following sections of the act: section 510 (registration, product listing, and premarket notification) section 519

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(records and reports) and section 520(f) (good manufacturing practice regulations) in accordance with § 860.95;

(5) In the case of a recommendation for classification into class II or class III, to the extent practicable, a recommendation for the assignment to the device of a priority for the application of a performance standard or a premarket approval requirement;

(6) In the case of a recommendation for classification of an implant or a life-supporting or life-sustaining device into class I or class II, a statement of why premarket approval is not necessary to provide reasonable assurance of the safety and effectiveness of the device, accompanied by references to supporting documentation and data satisfying the requirements of § 860.7, and an identification of the risks to health, if any, presented by the device.

(e) A panel recommendation is regarded as preliminary until the Commissioner has reviewed it, discussed it with the panel if appropriate, and published a proposed regulation classifying the device. Preliminary panel recommendations are filed in the Division of Dockets Management's office upon receipt and are available to the public upon request.

(f) The Commissioner publishes the panel's recommendation in the FEDERAL REGISTER, together with a proposed regulation classifying the device, and other devices of that generic type, and provides interested persons an opportunity to submit comments on the recommendation and proposed regulation.

(g) The Commissioner reviews the comments and issues a final regulation classifying the device and other devices of that generic type. The regulation will:

(1) If classifying the device into class I, prescribe which, if any, of the requirements of sections 510, 519, and 520(f) of the act will not apply to the device and state the reasons for making the requirements inapplicable, in accordance with § 860.95;

(2) If classifying the device into class II or class III, at the discretion of the Commissioner, establish priorities for the application to the device of a performance standard or a premarket approval requirement;

(3) If classifying an implant, or life-supporting or life-sustaining device, comply with § 860.93(b).

[43 FR 32993, July 28, 1978, as amended at 57 FR 58404, Dec. 10, 1992; 64 FR 404, Jan. 5, 1999]

### **§ 860.93 Classification of implants, life-supporting or life-sustaining devices.**

(a) The classification panel will recommend classification into class III of any implant or life-supporting or life-sustaining device unless the panel determines that such classification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. If the panel recommends classification or reclassification of such a device into a class other than class III, it shall set forth in its recommendation the reasons for so doing together with references to supporting documentation and data satisfying the requirements of § 860.7, and an identification of the risks to health, if any, presented by the device.

(b) The Commissioner will classify an implant or life-supporting or life-sustaining device into class III unless the Commissioner determines that such classification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. If the Commissioner proposes to classify or reclassify such a device into a class other than class III, the regulation or order effecting such classification or reclassification will be accompanied by a full statement of the reasons for so doing. A statement of the reasons for not classifying or retaining the device in class III may be in the form of concurrence with the reasons for the recommendation of the classification panel, together with supporting documentation and data satisfying the requirements of § 860.7 and an identification of the risks to health, if any, presented by the device.

### **§ 860.95 Exemptions from sections 510, 519, and 520(f) of the act.**

(a) A panel recommendation to the Commissioner that a device be classified or reclassified into class I will include a recommendation as to whether the device should be exempted from some or all of the requirements of one or more of the following sections of the